

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

In the Matter of)
)
Amendment of Part 101 of the)
Commission's Rules to Streamline)
Processing of Microwave Applications in)
the Wireless Telecommunications Services)
)

WT Docket No. 00-19

JUL 20 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

DOCKET FILE COPY ORIGINAL

COMMENTS OF RADSCAN, INC.

Radscan, Inc. ("Radscan"), by its attorneys, and pursuant to § 1.415(a) of the Commission's rules, hereby submits its comments in response to the *Notice of Proposed Rule Making* in the above-captioned proceeding.¹ The *Notice* seeks comment on numerous proposed changes to streamline Part 101 of the Commission's rules. The *Notice* also seeks comment on whether any of the services licensed under Part 101 come within the definition of "public safety radio services" pursuant to the Balanced Budget Act of 1997, and whether any Part 101 spectrum should be designated for public safety radio services.²

Radscan is one of the largest users of multiple address system ("MAS") frequencies licensed under Part 101, and has actively participated in prior Commission proceedings regarding the licensing and use of MAS spectrum. In these comments, Radscan encourages the Commission to (1) maintain the existing MAS licensing framework for the 928/952/956 MHz bands to avoid mutual

-
1. Amendment of Part 101 of the Commission's Rules to Streamline Processing of Microwave Applications in the Wireless Telecommunications Services, *Notice of Proposed Rule Making*, WT Docket No. 00-19, FCC 00-33 (rel. Feb. 14, 1999), 65 Fed. Reg. 38333 (2000) ("*Notice*").
 2. See *Notice* at ¶¶ 80-81. See also Pub. L. No. 105-33, Title III, 111 Stat. 251, 258 (1997) (amending Section 309(j) of the Communications Act) ("Balanced Budget Act").

exclusivity and to allow incumbent MAS licensees to modify or expand their systems under existing regulations, and (2) adopt a broad definition of the term “public safety radio services” consistent with Congressional intent.

I. The FCC Should Maintain the Current Licensing Scheme in the 928/952/956 MHz Bands.

In the *Notice*, the Commission seeks comments on how to modify Part 101 to ensure that it is consistent with the implementation of the Balanced Budget Act.³ While the *Notice* is primarily concerned with Part 101 spectrum above 2 GHz, Radscan is interested in the MAS spectrum in the 928/952/956 MHz bands. With respect to these bands, Radscan urges the Commission to maintain the current licensing procedures – site-by-site, frequency-specific licensing. Applying this approach is wholly consistent with the provisions of the Balanced Budget Act. Specifically, Section 309(j)(6)(E) requires the Commission “to continue to use engineering solutions, negotiation, threshold qualifications, service regulations and other means to *avoid* mutual exclusivity in application and licensing proceedings.”⁴ The existing licensing scheme for the 928/952/956 MHz bands requires prior frequency coordination before an application is accepted for filing with the Commission. This licensing scheme generally avoids mutual exclusivity. As a result, the Commission should maintain the existing licensing procedures for the 928/952/956 MHz bands.

The 928/952/956 MHz bands are highly congested, and it is unlikely that the Commission will receive voluminous applications for these frequencies. Most applicants filing for new frequencies in the 928/952/956 MHz bands are seeking to expand their existing facilities or to provide fill-in coverage by modifying their facilities. Such filings are rarely subject to competing

3. *Notice* at ¶¶ 74-79.

4. 47 U.S.C. § 309(j)(6)(E) (emphasis added).

applications, and even if there is a competing application on file, the Commission's first-come, first-served policy applies. Thus, the instances of mutual exclusivity are generally avoided.

Furthermore, there are unique technical and operational characteristics associated with the use of frequencies in the 928/952/956 MHz bands that must be considered in conjunction with any proposal to change the licensing scheme for these bands. For example, Radscan uses only four channels in the 928/952/956 MHz bands, but it cannot be grandfathered or relocated from these four channels without causing serious disruptions in security or the discontinuance of the services that it provides. These technical and operational reasons have been thoroughly documented in prior Commission proceedings.⁵ Whichever licensing scheme the Commission selects to govern Part 101 spectrum above 2 GHz, the Commission should maintain the existing licensing scheme for MAS spectrum, and indefinitely grandfather MAS licensees operating in the 928/952/956 MHz bands.⁶

II. The Commission Should Adopt a Broad Definition of Public Safety Radio Services Consistent with Congressional Intent.

The *Notice* asks whether any of the services licensed under Part 101 fall within the Balanced Budget Act's definition of public safety radio services.⁷ In the Balanced Budget Act, Congress

5. See Comments of Radscan in WT Docket No. 97-81 at 8-11 & Engineering Statement (Attachment A) (filed April 21, 1997); Reply Comments of Radscan in WT Docket No. 97-81 at 4-6 (filed May 16, 1997). In addition, the Commission found it necessary to rescind a rule that would have effectively grandfathered existing MAS systems and altered the technical basis for new licenses. See Amendment of the Rules to Eliminate Grandfathering Provisions Applicable to Licensees on MAS Frequencies, *Report and Order*, 8 FCC Rcd 2801 (1993) (acknowledging service disruption that would result from compliance with technical changes).

6. See Radscan's Petition for Clarification and Reconsideration in WT Docket No. 97-81 (filed May 3, 2000).

7. *Notice* at ¶ 81. The Commission already has a proceeding pending which specifically
(continued...)

expanded the Commission’s auction authority, but carved out an exemption for “public safety radio services.” The relevant statutory language excludes from auctions licenses for “public safety services, *including* private internal radio service used by State and local governments and non-government entities and *including* emergency road service provided by not-for-profit organizations that – (i) are used to protect the safety of life, health or property; and (ii) are not made commercially available to the public.”⁸ The Commission should broadly interpret this provision. The statute sets forth the two criteria that a radio service must meet to be exempt from auctions. First, it must be used to protect the safety of life, health and property. Second, it must not be made commercially available to the public. There is no requirement that the “sole” or “principal” use of the radio service must be to protect the safety of life, health and property. Accordingly, the exemption, on its face, applies to *any* radio service that is used to protect the safety of life, health, and property, as long as the radio service is not made commercially available to the public.

To further clarify the types of radio services that meet these criteria, the statute exempts from competitive bidding: (1) private internal radio service used by State and local governments and non-government entities and (2) emergency road service provided by not-for-profit organizations. This language is inclusive, as demonstrated by the repeated use of the word “including,” and should not be read to *exclude* other types of services. Using this interpretation, it is likely that most, if not all, of the Part 101 licensees, particularly those MAS licensees operating in the 928/952/956 MHz band,

-
7. (...continued)
addresses implementation of Sections 309(j) and 337 of the Communications Act of 1934, as amended. Specifically, WT Docket No. 99-87 seeks comments on the scope of the Balanced Budget Act’s exemption from competitive bidding for public safety radio services. 14 FCC Rcd 5206 (1999).
 8. 47 U.S.C. § 309(j)(2)(A) (emphasis added).

qualify as operating a public safety radio service. Moreover, the legislative history encourages a broad reading of the public safety radio services exemption. The Conference Report states that the term “public safety radio services” is much broader than the explicit definition of “public safety services” contained in Section 337 of the Communications Act.⁹ Radscan recommends that any licensee that: (i) uses Part 101 spectrum for private, internal use, (ii) does not make the spectrum commercially available to the public, and (iii) can demonstrate that some of the uses are safety-related, should be classified as a public safety entity and exempt from auctions.¹⁰

9. See H.R. Conf. Rep. No. 105-217, 105th Cong., 1st Sess., at 572 (1997).

10. The Commission has already determined that Radscan’s use of the MAS spectrum is for private, internal communications. See GTECH Corporation, CN WAN Corporation, Radscan of Detroit, Inc., TeleBeeper of New Mexico, Inc. and Unicom Corporation, *Memorandum Opinion and Order*, 13 FCC Rcd 4290 (1998) (*GTECH Recon. Order*). In addition, Radscan’s use of the spectrum for alarm monitoring protects the safety of life and property. Finally, Radscan does not make its spectrum commercially available to the public. The Commission has previously determined that Radscan is not compensated for providing a communications service, but rather for an alarm monitoring service, and that “Radscan merely uses MAS spectrum in the course of providing this monitoring service.” *GTECH Recon. Order* at 8.

III. Conclusion

Radscan respectfully asks that the Commission to: (1) maintain the existing MAS licensing framework for the 928/952/956 MHz bands to avoid mutual exclusivity and to allow incumbent MAS licensees to modify or expand their systems under existing regulations, and (2) adopt a broad definition of the term "public safety radio services" consistent with Congressional intent.

Respectfully submitted,

RADSCAN, INC.

By: 

Edwin N. Lavergne
Tamara Y. Brown
Shook Hardy & Bacon, LLP
600 14th Street, N.W.
Washington, D.C. 20005-2004
(202) 783-8400

July 20, 2000

Its attorneys